

THE COLLABORATION OF 'TRANSCRIPT & PRONOUNCEMENTS' IN REACHING 'RULES' FROM THE DIFFERENT TYPES OF DISPUTED 'EVIDENCE'

Dr. Fouad A. O. Ahmad^{1*}

¹Assistant Professor, Faculty of Law, Philadelphia University, Amman – Jordan.

ARTICLE INFO

Article History:

Received: 06 Feb 2018;
Received in revised form:
27 Feb 2018;
Accepted: 27 Feb 2018;
Published online: 10 Mar 2018.

Key words:

Text,
Reason,
Advantage,
Disadvantage,
Inference,
Desirability,
Sharia Politics.

ABSTRACT

The Islamic Sharia has received divine care. Thus, it is complete and abrogator of the previous sharias. This necessitates that its provisions – being the last sharia and its prophet has been sent to all people- should be valid everywhere and everywhen. And also they should be flexible, yet its foundations and principles should be firm, in order to comprehend all updates in all aspects of human life. Its flexibility and ability to deal with different times, places and environments, has been demonstrated by its bright history, when it ruled the world for nearly eight centuries with fluency and wisdom that have no historical precedent, neither before nor after. Generality of texts, comprehension of principles, lucid minds and sub-evidences that combine the original texts with the mind's capacity to bring them together, without inconsistency or conflict, have the greatest credit for the endurance of the Islamic Civilization, in its clash with other civilizations. This is crystal clear in the collaboration between reason and tradition in the endurance of sharia provisions that ensure brining advantages and preventing disadvantages. That is what I try to prove and confirm in this researching with scientific, historical and factual accuracy.

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INTRODUCTION

In the Name of Allah, Most Gracious, Most Merciful

Rational persons are in agreement that most of life's advantages and disadvantages are known by reason, and that wise persons usually prefer more important to important, and better to good, and best to better. And whereas texts are few and events accidents are

Cite this article as: Ahmad, F. A. O., "The Collaboration of 'Transcript & Pronouncements' in Reaching 'Rules' from the Different Types of Disputed 'Evidence'", *International Journal of Advanced Scientific Research & Development (IJASRD)*, 05 (02/I), 2018, pp. 01 – 33. <https://doi.org/10.26836/ijasrd/2018/v5/i2/50202>.

* **Corresponding Author:** Dr. Fouad A. O. Ahmad, fouadsartawi@yahoo.com

many, hence sharia provisions should be attributed to them under advantages and disadvantages principle. Here reason plays major role, yet its decisions is not a provision, since it is not legislator unless its insight agrees with indications of rightfulness, and ways of fairness extracted from Allah's Book or His Messenger's (PBUH) Tradition. Thus, tradition has always priority over reason, and we may not set our minds free that it oversteps tradition's limits. Now the question is: Is following sharia sub-evidences subject to such limit? And is the relationship between reason and tradition a harmonic or conflicting one? This is what I would like to clarify in this research titled (Collaboration between Reason and Tradition in the Enactment of Provisions Depending on the Controversial Evidences).

1.1 Difficulties of Research

The difficulties of research are almost limited to the dispute raised by scholars of principles of jurisprudence (Ulama' Al-Osool), and subsequently jurisprudents (Fuqaha'), about the principles of deducing provisions (Istinbat), and also to variability of adopting controversial evidences, though, whoever fully considers the sub-evidences would conclude that such dispute is about the term rather regarding or disregarding the evidence.

1.2 Importance of Research

The research is important since it introduces to us the sources of flexibility in the Islamic Sharia, and the role of reason therein. And flexibility of Islamic Sharia is important since it enables us to keep up with all updates, in isolation from upholding old manners, or resorting to manmade regulations, and thence, the Muslim's life shall be according to what Allah and His Messenger approve.

1.3 Limits of Study

This study is ample and its subjects are so diversified that the researcher should be limited to a specific axis of research that is the absolute interests (Al-Masaleh Al-Mursala) and its synonymous and satellite terms, what enables us to convey the meanings and clarify our intention before teachers and learners.

1.4 Methodology of Research

Inductive and analytical scientific approach in order to reach the best results, reviewing past and current historical events.

1.5 Mechanism of Research

Making use of fundamental and purposive studies, along with demonstrating points of view with all scientific accuracy, and certifying and verifying verses, Hadiths and references.

REASONS WHY I CHOOSE THE SUBJECT

The reason is the chaos we are seeing in the legal opinions (Fatawa), and the confusion between what is relative and irrelative to sharia, due to the ignorance of those who give legal opinions (Muftis) of the sharia's attitude towards reason and the relationship

between them. This has caused me to write in this subject, which greatly affect the Muslim's life which is about legal (Halal) and illegal (Haram), and also to notify whomever is ignorant, of the right way in this regard.

2.1 Objectives of Research

This research aims at reaching these conclusions:

- (1) Collaboration between reason and tradition in enhancing and devising sharia provisions.
- (2) Tradition and reason conflict only when desire and ego, which is a persistent enjoiner of evil, are followed.
- (3) Flexibility of the Islamic Jurisprudence (Fiqh) and its provisions and its ability to keep pace with events and accidents.
- (4) Confirmation of the legislator willingness to bring about advantages and keep off disadvantages.
- (5) Confirmation of the reason's role which Allah did not create in vain, but to be supportive of texts.

2.2 Previous Studies

All manmade doctrines and laws seek to bring about advantages and keep off disadvantages. And there is no doubt that such purpose is glorified, provided the concerned executants commit themselves to strict controllers, far away from desire and individual wishes. And also there is no doubt that the Islamic Sharia has been clearer and more strict about such concepts on which the individual's life is built in the earthly and the hereafter lives than the manmade laws, since it observes, along the way, the truth and justice (And the word of your Lord has been fulfilled in truth and justice) (Al An'aam- Verse 115). Thus, it has called every advantage: right, and every disadvantage: wrong, and defined three paths for the rightfulness, i.e., justice, good conduct and giving to relatives, and three sources of wrongdoing, i.e., immorality, bad conduct and oppression, as mentioned in the most comprehensible verse in the Holy Quran: (Indeed, Allah orders justice and good conduct and giving to relatives, and forbids immorality and bad conduct and oppression) (Al Nahl-Verse 90)^[1]. Fulfilling those meanings, the one, according to the divine methodology, shall be well guided to the straight path, to which we ask Allah to guide, in every kneeling (Rak'ah) of our prayers, and it is the same path of Allah that depends on insight and instinct upon which Allah has created people, before becoming impure with the decoration of the earthly life. Though humanity is more capable of defining the wrong and evil in all aspects of this life, apart from the hereafter, yet the Islamic Sharia has detailed defining the (rightfulness), which some people thinks that it achieves happiness in the hereafter only, but those people disregard that regulating the earthly life needs "rightfulness" that fits everywhen and everywhere. There is a verse that summarizes the same to us in which Allah said: "The land is inherited by my righteous slaves" (Al Anbiaa'-Verse 105). Thus, rightfulness does not mean fear of Allah (Taqwa) merely, apart from the sciences that achieve inheritance for the human being, including the mechanisms and technologies that enable him/her to accomplish development, constructions and getting the best results out of

¹ Al- Jamea' Li Ahkam Al-Quran/ Al-Qurtubi- Beirut & Damascus- Manahel Al-Erfan 10/165.

such fear of Allah, and the enabling means and ways of construction. And keeping peace of mind, taking advantages of construction the universe and fulfilling a noble and just life for the consecutive human generations^[2], are proofs that the human being is acting under the instructions of Allah. The same is referred to by the verse in which Allah said: "Indeed, in this is notification for a worshipping people." (Al Anbiaa'-Verse 106). This confirms the importance of experiences, expertise and science in every aspect of life. The same is stated by Allah's messenger (PBUH), in the matter of dates pollination, when Prophet Mohammad (PBUH) said to the farmers: [You people know more about the issues of the world^[3]]. The approach of the messenger, and subsequently of his companions and their followers, demonstrates how keen the legislator is to give priority to the absolute interest over the private one, even if the later is damaged. The letter sent by Omar Bin Al-Khattab (Allah Bless Him) to Abu Musa Al-Ash'ari, and the letter sent by Ali Bin Abi Taleb (Allah Bless Him), to Malik Al-Ashtar Al-Nukha'I, perfectly embodied all what we mentioned in all aspects of life, taking into consideration the balance between this life and the hereafter, since both are necessary for the human in current life and the futuristic one^[4]. And if we scan the Sharia provisions, whether the stated or unstated ones, we will find out that observing interests is embedded in all assignments, starting with worships, through transactions, limits of halal and haram, social relationships and ending with sharia politics etc. I will give some examples to prove that the previous studies have started from the start of revelation to date, clarifying that the interest may be in the transaction itself or in the method of execution or preservation thereof, depending on explicit text, comprehensive principles or general provisions that do not conflict with texts of the book (Holy Quran), the Sunnah (Messenger's Tradition), the Ijmaa' (Consensus) or the Analogy (Analogy), such as:

- (1) The agreed upon [by Al-Bukhary and Muslim] Hadith, that the prophet of Allah (pbuh) said: (By the One in Whose Hand is my soul! I nearly ordered that firewood be gathered to be lit, then I would have ordered that the Adhan be called for prayer, and ordered a man to lead the people in prayer, then I would have gone from behind to those men and burned their houses down over them...etc.)^[5]. Scholars enumerated some of the hadith's benefits, for example: Threat should precede punishment, because the most action would not be resorted to if the least action were enough. Or the same depends on "That without which an obligation cannot be performed is itself an obligation" principle. And this event proves that criminals may be taken aback. And it permits the Imam or his deputy to leave the corrective prayer to take out those who hide in their homes. And it also permits the imamate of the good person if the better is present, if doing so serves the absolute interest^[6]. That is why Omar Bin Al-

² Islam and Capturing Power for the Public Interest/Mohammed Al-Haj Nasser – 1st Edition 1411 AH, Fidalah Printing House, Pages 343, 479.

³ Sahis Muslim explained by Al-Nawawi- Beirut- Dar Ihya'at Tl-Turath Al-Arabi – 2nd Edition 1394, 1932, 15/118.

⁴ General Purposes of Islamic Sharia/ Yusuf Hamid- USA- International Institute for Islamic Thought, 1st Edition, 1991, pg 46.

⁵ Fatuhl Bari Explanation of Al-Bukhari Sahih/ Ahmed Bin Ali Bin Hijr, Beirut, Dar Ihya'at Tl-Turath Al-Arabi, 4th Edition, 1408-1988, 2/102.

⁶ Ibid 2/103.

- Khattab (Allah Bless Him), used to entrust some people with certain jobs and leave who were better than them: he said: "I hate to stain them with work"^[7].
- (2) The morals stated by the author of [Al-Trateeb Al-Edariyah] book. He said that learner, if has frequented to scholarship councils (Majalis Al-Elm), he would not have been free from sitting with scholars, talking to wise men, studying with colleagues and arguing with people with different points of view, and thus he should be keen to observe good manners^[8]. He stated sixteen morals that were widespread in the time of the prophet (PBUH).
 - (3) The hadith narrated by The Messenger of Allah (PBUH) that: Forgive the people of good qualities their slip. And people of good qualities are those who are not known for being evil. Al-Mawardi said: Their slips may mean minor sins, or the first sin committed by a Allah-fearing man^[9]. This Hadith is traceable to the Prophet, and is considered authentic by Al-Shafei, Ibn Adi and Al-Askari, and Al-Haithami in Majma' Al-Zawa'ed said: Its narrators are trustful^[10].
 - (4) The collection of the Holy Quran by Abu Bakr Al-Sedeek (GBH), to preserve Quran from loss, after memorizers of the Holy Quran were murdered. Othman Bin Affan (GBH), also, recollected the Holy Quran in the year of 25 after Hijrah, in order to bring people (the Ummah) together in terms of unified text of the Holy Quran, and in order not to dispute on their book like Jews and Christians^[11]. All of that refer to that the companions of the prophet did their best to reach the best judgment regarding the events, whether in the time of the prophet, or after his death, and set the way forward for the scholars^[12].
 - (5) The Ijtihad of Umar bin al-Khattab about the Land of al-Sawad, and others: he considered it spoils belonging the Muslims, so that they could inherit it; not part of the one fifth belonging usually to Allah and his Messenger [According to the usual partition of the war booty]. ^[13]
 - (6) Karatha Bin Ka'b said: "Once we headed to Iraq. Omar Bin Al-Khattab walked with us until we reached a wall. He said: "Do you know why I am walking with you?" They said: "We are companions of Messenger of Allah (PBUH)." He said: "You are coming to inhabitants of a village, busying themselves with reciting Quran. Do not distract them with Hadith. Let them busy with Quran, and narrate as little as you can of narrations of the Messenger of Allah. ^[14]"

⁷ Mahd Al-Sawab in the Virtue of Amir Al-Mumeneen Omar Bin Al-Khattab/ Yusuf Bin Al-Hasan Abdulhadi (Ibn Al-Mubared), inspected by Abdul Aziz Al-Quraiyh, Al-Madina Al-Munawarah, The Islamic University, 1420/2000, 1/318.

⁸ System of Prophetic Government, called Administrative Orders, Abdulhamid Al-Kittany, Beirut, Dar Al-Kitab Al-Arabi, N/V, 2/329.

⁹ Sahih Ibn Habban/ Mohammad Bin Habban- Quest of Mohammad Sou Nemer & Co.- Ministry of Awqaf-Qatar- 1st Edition 1433 AH/ 2/317 2010 AC.

¹⁰ El-Maqased El-Hasaneh/ Mohammad Abdul Rahman El- Sakhawi- Quest of Abdullah El-Siddeq & Co. Beirut- Dar El-Kotob El-Elmiyeh 1st Edition 1399 AH. P.73/ 1979 AC.

¹¹ El-Itqan Fi Oloum El-Qura'an/ Abdul Rahman El-Syouti/ Quest of Ahmed Bin Ali- Cairo- Dar El-Hadeeth 1426 AH/ 2006 AC. 1/186

¹² Elaam El-Mowaqen/ Mohammad Ibn Qayyem El-Jawharyeh- Beirut- Dar El-Kotob El-Elmiyeh 2nd Edition 1414 AH/ 1993 AC. 1/166

¹³ The Money/ El-Qasem Bin Sallam- Quest of Mohammed Khalil Hras& Co. Beirut- Dar El-Kotob El-Elmiyeh 1st Edition 1406 AH/ 1986 AC. P65.

¹⁴ Moutaser El-Mokhtasar/ Yousef Bin Mousa El-Hanafi- Haidar Abad 2nd Edition 1363 AH. 2/281.

- (7) Omar said: "If I am still alive, Allah Willing, I will wander among people for a year. I know that they have needs they could not inform me about: Either they could not approach me, or their governors did not lift up to me." And when he saw some people following others, he lifted his Durrah (Bat), and was about to beat them. They said: "Oh, prince of believers. Fear Allah." He replied: "Did not you know that it is a trail for the followed and humbleness for the follower?"^[15]
- (8) He appointed in every governorate, as governors, the one who could serve its interests the best: For judiciary, he appointed the one who best knew arguments and legal provisions. For army, the one who best knew conspiracies, policies and be the bravest. For social affairs, the one who best took care of orphans and grew their funds. He considered one of the must know novelties is the grammar of the Arabic language, since it helps understanding Quran and Sunnah (Tradition of the Messenger). And it is a must because adjusting the sharia is a must, and it could not be adjusted without grammar, under "That without which an obligation cannot be performed is itself an obligation" principle^[16].
- (9) Monotheism (Tawhid) is subject to Muslims provisions. Accordingly, attributing nonbelieving to someone depends on Sharia not reason, since sentencing to death or determining eternity in fire is a religious not reasonable matter, contrary to what some people think^[17]. That is why Abu Bakr Al-Sedeek deemed necessary to fight deserters who refrained from paying Zakat they used to pay to the Messenger of Allah, and separate prayer from alms, though Allah brought them together in his book (Quran). Followers of the companions, and the next scholars followed the steps of the messenger and his companions. And even though books of principles of the different doctrines denied adopting the absolute interest, and issuing provisions depending on them, yet. If we considered carefully their principles of extracting provisions when no express text was existing, we would find an agreement between the four great Imams on adopting the interests. Yet each one of them used different terms and words to clarify the cause of provision, the evidence of consideration or the way of inference. Al-Qarafi considered the absolute interest is existing in all doctrines, when carefully studied, since they always compares events and separate them from each other, and did not seek an indication to an existing proof by way of consideration, what is nothing else but absolute interest^[18]. Al-Shawkani quoted Ibn Daqiq Al-Eid's saying: "Malik overweighed such type of source of sharia more than other jurisprudents, followed by Ahmed Bin Hanbal. Besides, other jurisprudents in general scarcely disregarded it^[19]. With regard to the Hanafi scholars, it is not conceivable for them to abandon acting pursuant to the absolute interest, as they adopt the text as body and soul, and they are interpreting the texts pursuant to the intentions

¹⁵ Mahd El-Sawab 2/521, 70.

¹⁶ Moutaser El-Mokhtasar/ Yousef Bin Mousa El-Hanafi- Haidar Abad 2nd Edition 1363 AH. 2/281.

¹⁷ Ibid. 3/94

¹⁸ Sharh Tanqeeh El-Ousol/ Ahmed Bin Idris El-Qarafi- United Company for Technical Printing 1st Edition 1430AH/1973 AC. Quest of Taha Saad P. 446.

¹⁹ Irhad El-Fohoul/ Mohammad Ali El-Shoukani- Beirut- Contemporary Library 1st Edition 1430AH/2009. 2/169.

of Sharia. Thus, it was highly unlikely that they disregard it, however, they do not consider it as independent evidence, and they considered applying it conditional on other evidences such as Istihsan (Acceptation), and they enlisted a type thereof which is acceptance in the absolute interest, for this reason, one may not envisage that the Shafei scholars are not applying the Absolute interests.

Al Juwaini said: It is well known that the Shafei scholars adhered to the meaning; even it was not based on established origin. He also stated in another place: Whoever trails the words of Al Shafei shall note they do not relate to the origin, however, he attached provisions to the absolute meanings. Al Zanjani indicated that: Al Shafei adhered to the interests based on the sharia comprehensive matters, although not based on specific details^[20]. Imam Ahmad followed the steps of his Sheikh Al-Shafei in calling the same Qiyas (Analogy), and Ahmad's most significant efforts were in the area of sharia politics. Some Hanafi researchers in the field of absolute interest said that one of the most significant conclusions was the validation of the legitimacy of the absolute interest for Hanafi in the form of the absolute congenial matter and acceptance. The concept of acceptance for Hanafi unavoidably does not contravene the concept of absolute interest argued by the Maliki, Shafei and Hanbali scholars at the level of necessity and need^[21]. Which all came in conformity with what stated by Imam Al Ghazali in his book (Al Musatsfa) that we construed the interest in conserving the intent of the Legislator. There is no disagreement in following it, rather it should be deemed as a conclusive pretext^[22]. This issue was noted and alerted by most of the scholars, philosophers, jurists, modernists and theorists. However, Al Hakim Al Tirmidhi (2579 AH.) is deemed as one of the most renowned scholars who worked on the justification of the Sharia provisions and looked for its secrets. Moreover, he is one of the first scholars who used the term Maqasid (Objectives), whereas, he used that term in the heading of his book (the Prayer and Objectives), as well as his book Al-Fourooq (the Differences).

If we review the scholars of principles who were masters of this art and who elaborately deliberated and searched the subject scrutiny, we shall note the philosopher Ahmed Ibn Sahl Abizaid Al Balkhi (322 AH), who wrote a book entitled Masalih Al Abdan wa Al Anfus" ("Sustenance of Body and Soul") and another book entitled (Al Ibana An Ilal Al Diyanah) (the statement of causes of religion). And Al Ragheb Al Asfahani, the author of the book of Al Thariaa Ila Makarim Al Sharia (the Cause to Sharia Noble Deeds). And before him was Al Baqlani (403 AH), who was called Sheikh of Sunnah and the speaker of the nation, and he is the one who presided the Maliki doctrine in his time, and was approved by all the other sects as arbitrator between debaters^[23].

Then came Ibn Rushd (Averroes) in his book (Bidayat Al Mujtahid and Nihayat Al Muqtasid) (the beginning of the diligent and the end of the moderate) and the book of (Al

²⁰ El-Masaleh El-Morsaleh wa Tatbiqatoha/ Abdullah Mohammad Saleh- Damascus University's Magazine- 1st Issue – 2000AC P.363.

²¹ El-Masaleh El-Morsaleh wa Tatbiqatoha Fi El-Mathhab El-Hanafi/ Farat Hussain- Malaysia- Islamic University- Master Thesis 1435AH/ 2014 AC. P.2 B.

²² El-Maqased Theory/ Ahmed El-Risouni- Riyadh- International Book House for Islamic Book 2nd Edition 1413AH/ 1992 AC P.28 Forwards.

²³ Tarteeb El-Modawalah & Taqreeb El-Masalek/ Ayyad Bin Moussa El-Siti- Quest of Saeed A'arab- Morocco- Ministry of Awqaf 1st Edition 1402 AH/1982 AC. 7/44.

Muqadimat) (Introductions), and then what was written by the scholars of principles such as Imam Al-Ghazali and Imam of the Al Haramain Al Juwaini and Fakhr Al-Din Al Razi and Al-Aamidi and Sahib Al-Burhan and the Asnawi, and then what was written by the Masters of interests such as Al-Iz bin Abdul Salam in his two books (Quawid Al Ahkam fi Masalih Al Anam) and (Quawid Al Ahkam fi Islah Al Anam) (Rules of the provisions in the interests of mankind) and (Rules of the provisions in the reform of mankind), and Al Shatibi in his two books (E'tisam) (Adherence) and (Al-Mwafaqat) (Approvals), and what was written by Ibn Taymiyyah and his follower Ibn Qayyim Al Jawziyyah, and what was stated by Al Shawkani in his book (Irshad Al-Fuhul) and then the later scholars such as Abdulwahab Khallaf and Mustafa Al Zaraqa and Al Shanqiti, as well as the studies on the theory of interest in Islamic Sharia (Such as the theory of Maqasid (Objectives) of Imam Al Shatbi) by Ahmed Al Raysouni, and the book (Towards Activating the Objectives of the Sharia) by Dr. Jamal Al Din Atiyyah, and many other books such as the book of Al Maqasid Al-Shariyyah by Ibn Ashour and Al Maqasid Al Shariyyah by Ilal Al Fasi to name a few. However, I have discovered a new interest in the subject of Objectives and its role in advancing and raising the level of provisions in several areas of life through these Thesis in Masters and Ph.D. which I would like to indicate to whom it may concern, including:

- (1) The role of absolute interest in the provisions of the sharia politics in the era of companions – Mohammed Tahseen Atta Rajab – Master thesis, Gaza – The Islamic University 1430 AH / 2009 AD.
- (2) Advisable independent diligence and its impact on the stability and changing of the Fatwa judgment (Applied objective study) - Abdul Aziz Wasfi, PhD thesis – Al Hassan II University, Morocco, 1432 AH. / 2010 AD.
- (3) Absolute interests and their influence on contemporary medical issues - Mohamed Al Hadi Al Tijani - Master Thesis - L'universite D' El - Wadi, Algeria 1434 AH/ 2013 AD.
- (4) The absolute interest and its contemporary applications in governance and the political systems – Abdul Hamid Ali Mahmoud – Al Najah University - Master Thesis, Palestine 2009 AD.
- (5) Inference by Absolute interests in the Contemporary Financial Issues - Mohamed Ismail Osman Zain – PhD Thesis – Umm Al Qura University, Saudi Arabia, 1428 AH.
- (6) Absolute interests and its applications in the Hanafi doctrine - Farhat Husain - Master Thesis, Malaysia - Islamic University 1435 AH. / 2014 AD.
- (7) Absolute interests and their influence on the flexibility of Islamic jurisprudence- Mohammed Ahmed Burkab - Dubai - Dār Al-Buhūth lil-Dirāsāt al-Islāmīyah wa-Ihyā' Al-Turāth, first edition 1423 AH / 2002 AD.
- (8) The view of the scholars of principles on the Absolute interests and Acceptation in term of Effectiveness- Zinedine Al Abd Mohammed Al Nur - Dubai - Dār al-Buhūth lil-Dirāsāt al-Islāmīyah wa-Ihyā' Al-Turāth, first edition 1425 AH. / 2004 AD.
- (9) Absolute interests, Juristic and Fundamental Discussion with Applied Examples / Mahmoud Abdul Karim Hassan, Beirut, Dar Al Nahda Al Islamiyya, First Edition, 1415 AH. / 1995 AD.

- (10) Absolute interests and the common human factors (research in the origins of sharia politics) / Oris Al Fassi Al Fihri - Seminar on the development of jurisprudence sciences - Sultanate of Oman - Ministry of endowment and religious affairs, 2014 AD.
- (11) Query and Request of Public Opinion of the King of Morocco Mohamed VI of the Higher Scientific Council in Morocco on the Absolute interest and its relation to the issues of managing public affairs, during the King's speech in Fez on the occasion of the opening of the first session of the Activities of the Supreme Council for Education, Training and Scientific Research, 1426 AH / 2005 AD.
- (12) The fifteenth issue of the magazine of International Islamic Fiqh Academy - the fifteenth session of 1425 AH / 2004 AD, was dedicated to deliberate research related the Absolute interests.

THE FIRST TOPIC

3.1 Reason (Mind) and its Role in Realizing the Interests of Sharia

3.1.1 First Question: *Lingual Definition of the Reason (Mind)*

According to Ibn Zakaria: The Arabic Letters comprising the word (mind) have the same regular origin which applies to all similar verbs, and indicates a restriction. Al Khalil Bin Ahmed Al Farahidi said: Mind (knowledge) is the opposite of ignorance, and the phrase (a man of reason) refer to the sane, intelligent and sensible man, and the old Arabic proverb indicates that: (a dull could be sensible (there is method in the madness)^[24]. Similarly, the word (Mind) means (intelligence) which the opposite of idiocy, and also refers to type of adornment, and denotes the constipation. Moreover, the mind means the binding and tightening of the camel's limbs together^[25], the word also refers to Diyya (Blood Money). Al-Asmaei explained: Diyya called Aql (mind) according to the origin thereof, whereas, camels were To'qal (bonded) at the yard of guardian of the victim. Then the use spread until the word (mind) denoted to the blood money (whether paid camels or cash)^[26].

Furthermore the word (mind) designates the intelligence and intellect, and that is why some people said: The mind is instinct by which a man arranges to comprehend the speech^[27].

While, others derive the mind from the Arabs saying Iqal Al-Naqah (camel rope) because it prevents and restrains the holder thereof from being ignorant, and that is why the Arabs said: the medicine aqala someone's stomach if it caught it^[28].

All these meanings give a crystal clear indication that the mind restrains and holds the self from doing what it wishes. The mind is balance, and whenever the Messenger of Allah (peace be upon him) was told about a worshiper he used to ask about his mind and

²⁴ El-Masaleh El-Morsaleh & El-Mostajedat El-Asryieh/ Saeed Ajdeerah- Dya'a Network for Conferences & Studies 31/5/ 2014 AC. P4/8.

²⁵ Mujam Maqayes El-Lougha/ Ahmed Bin Fares Bin Zakaryia- Beirut- Dar Iya'a El-Turath El-Arabi 1st Edition 1422AH/2001 AC. P647.

²⁶ El-Moshref El-Mouallem/ Abdullah Bin El-Hussain El-Akbari - Mekka- Om El-Qurah University- Quest of Yasin Mohammad El-Sawas 1403AH/1983 AC. 1/492.

²⁷ El-Mosbah El-Muneer/ Ahmed Bin Mohammad El-Fayoumi- Beirut- Lebanon Library 1987 AC. P 160.

²⁸ El-Khel El-Morafeq & El-Sadeeq El-Sadeq/ Bduallah Bin Saleh El-khalifi- Quest of Maryam El-Naimi- Qatar- Ministry of Awqaf 1st Edition 2010AC. 2/115.

sanity: if the mind was weak and poor, then the heart shall be captured by passion and fancies, and even the man was a diligent worshiper, however, his worship in general shall remain incorrect and uninformed^[29]. And this is what Imam Ali (may Allah be pleased with him) intended when he said: "no one gained a better thing than a mind that guides him to good deeds or restrains him from bad deeds^[30], like the rope which prevents the camel from running).

3.1.2 The Second Question: *The Terminological Definition of the (Mind)*

The scholars gave diverse definition concerning the mind, due to the original difference in the essence, feature and types thereof. Al-Mawardi cited numerous definitions, and rejected most of them, until he said: Others said – which is the correct statement – mind is to have knowledge of the essential sensible matters, and this shall fall in within two categories: one is what may felt by the senses, and the other is what was essential in the soul^[31]. Al Jarjani stated in that regard: "It is the essence that realizes the mundane matters by various media and the sensible matters by vision^[32]. While, Ibn Hibban said: "admiring and respecting the good morals and ethics and rejecting nonsense and trivial matters is the core of the mind^[33]. Max Monod described the mind as mere physical-chemical processes^[34]. Whereas, Judge Abdul Jabbar considered that it is an assortment of specific sciences when they realized and attained in the rational person, then his deeds shall be deemed productive and conclusive and his action are rational^[35].

Therefore, we note that opinions differ on the ipso facto of the mind, according to the different looking at its truth, function, capability and influence on provisions and events both individually and collectively, this consequently led to details in the types of mind and function of each type.

Ibn Khaldoun cited that the first type is the distinguishing mind by which the acts are taken, and then the experimental mind which is the result of thinking of the orderliness of acts and avoiding corruptions, and then comes the category of the theoretical mind, which was interpreted by the scholars, since Allah has grant us hearing, sight and hearts (minds)^[36]. And Mawardi divided the mind to the instinctive which is the actual mind to which mandate is related coherently, and may not exceed such boundary increasingly or decreasingly, by which the human being shall be differentiated from the rest animals, and the mind equipped with plentiful experiences and the wisdom of the elders is deemed as the essence of knowledge and the rationality of policy and the correct idea^[37]. Al Manawi

²⁹ Nawader El-Ousol/Mohammed El-Hakim El-Tormozi- Beirut- Dar Sader 1264AH. P. 406.

³⁰ El-Thare'aa to Makarem El-Shareah/ Al-Hussain Bin Mohammed Al-Ragheb El-Asbahani- Damascus- Dar Iqraa 1st Edition 1422AH/2001 AC. P. 98.

³¹ Adab Al-Donia Wa Al-Deen/ Ali Bin Mohammed Al-Mawardi- Quest of Mustafa El-Saqqa- Beirut- Al-Maktaba Al-Thakafiyah, 3rd Edition, 1375 AH/1955 AC. P. 21.

³² El-Ta'arifat/ Ali Bin Mohammad El-Jarjani- Beirut- Dar El-Kitab Al-Arabi 1st Edition 1402AH. P. 197.

³³ Rawdet El-Okala'a wa Nozhet El-Fodala'a/ Mohammad Bin Jabban El-Basti- Beirut- Dar El-Kotob El-Elmiyeh- Quest of Mohammad Mohiy Eddin 1397AH/1977AC. P. 16.

³⁴ The Human, This Unique Creature/ John Louis- Translated by Saleh El-Kazem- Baghdad- Ministry of Education 1981 AC. P. 53.

³⁵ Human and Reason/ Nayef Ma'arouf- Beiruty- Sabil El- Rashad 1st Edition 1414 AH/1995AC. P. 55.

³⁶ The Introduction/ Abdul Rahman Bin Khaldoun- Beirut- Dar El-Kotob El-Elmiyeh 1st Edition 1413AH/1993AC. P372, free quotation.

³⁷ Adab El-Donia Wa El-Din P. 22.

indicated two types: the mind in mind, which are the theories stored in the (instinctive) mind, and thus it gets the feature of recalling whenever desired, and the experimental mind^[38]. However, Al-Sahrawardi, the philosopher, called Sharia as the Primary Mind (the applicable Sharia provisions), and said that: Sciences that are produced by the Primary Mind are not expressive and emotional. Proof is a mere measure of the congenital mind^[39]. And due to the fact that the mind is a meaning Allah has embedded in man, that is, it is a creation of Allah, not the act of man, thus, mind is Allah' agent in the man. However, the senses may be deceived, and the conclusive and final verdict only shall be to the mind, and the correct clarification shall be only to the mind. The wise men have concurred that the natural mind and the intuitive generosity could not reach perfection unless with the aid of the acquired mind^[40]. Henceforth, the Arabs used to say before Islam: "The mind is the collective group of trials and the decisiveness is suspicious"^[41]. Ibn Khaldoun indicated that the crafts grant the craftsman a sharp mind, particularly the writing and the math^[42].

3.1.3 Third Question: *The Qualities of the Mind*

Allah has given everyone a delicate power to be able to differentiate between right and wrong; good from evil. Thus, when the mind is supported by sound instinct, the holder thereof shall incline to good deeds, interests, and charities and avoid evils. That is why we notice that mind transcends the king and enters the kingdom, and ranges around the unseen^[43], thus, the holder of this mind shall find superior pleasure than the pleasure of the occasional senses that rapidly fade or dulled by the holder and shall abandon it.

As Al Muhasibi indicted that: you should know that every mind which is not escorted by three things shall be an (cunning) mind: preferring compliance to sin, and knowledge to ignorance, and religion to the worldly affairs^[44]. And thus we may deduct that the nation of Islam may not be a frontrunner in this life unless it associates the elements of the authenticity of faith represented in the book of Allah and the Sunnah of his Prophet (peace be upon him) and the intellectual superiority that we were ordered to follow by Allah the Almighty when he called us to consider and think and meditate on this wide universe that comprises all the knowledge, and abandon ignorance, political tyranny, psychological oppression and preoccupation with the trivial matters. In that sense, the noble companions and the righteous followers who came after them, have set a role model for us to comprehend this equation, which has made the State of Islam the supreme nation in history in mere a quarter of a century. It has succeeded in incorporating all cultures and irregular ideas, besides, it was able to accommodate all the sects whether the agreeing a disagreeing groups, thus, we do not claim the Utopia, but merely returning to the roots of our

³⁸ Ta'areef/ Mohammad Abdul Raouf El-Manawi- Quest of Mohammad Eddayah- Beirut & Damascus- Dar El-Fikr Elmouaser 1st Edition 1410AH. P. 521.

³⁹ Kashf El-Fadayh El-Younanyah Wa Rashf El-Nasaeh El-Imanyieh/ Mahmoud Bin Mohammad El-Sahrouirdi- Quest of Ayshah El-Mana'e- Qatar- Ministry of Education 1431AH/2010AC. P. 267.

⁴⁰ Rasa'el El-Jahez/ El-Jahez Othman Bin Bhr- Beirut- Dar El-Jil 1st Edition 1411AH/1991AC. 1/96.

⁴¹ Gharib El-Hadeeth/ Ahmed Bin Mohammad El-khutabi- Quest of Abdul Karim El-Gharbawi- Om El-Qurah University 1402AH. 3/1228.

⁴² The Introduction P. 339.

⁴³ Kashf El-Fadayh El-Younanyah P. 166.

⁴⁴ Risalet El-Mostarshideen/ El-Hareth Aasad El-Mouhasbi- Quest of Abdul Fattah Abu Gheddeh- Cairo- Dar El-Salam 1988AC. P97.

civilization, which is a reality recognized by the enemy and the friend for at least eight centuries before being affected by the wicked, malicious and infidels. The desertion from the Lord's path, backwardness, inadequacies and intellectual weakness are the reason of the destruction of supreme civilization that humanity could not live in peace and security but by applying its principles and rules, knowing that, the principles of doctrine are obtainable and preserved by the legislator, and we only have to be good followers and work hard to invent in our food, medicine and weapons as well as establishing justice in all our places of existence.

The Nation of Islam is demanded (leaders and scholars) to start from the faith as an integral part reinforced by the Muslim mind, which highlight its cultural role in spreading the Islamic Aqaidah (Doctrine) and filling the legislative and legal gaps in the matters without a text from Quran, Sunnah or consensus as the case with social and human sciences, such as education, politics, economics, management and information sciences, whereas, these sciences are based on the hypotheses of behavioral sciences and the outcomes of their research and perceptions concerning the nature of the human being^[45], along with undertaking to observe and comply with the sharia, and not to contravene the applied provisions and the texts of the legislative origin. This is a wide field in which Reason and Tradition goes hand by hand, in our present time, however, we need to make use and take advantage of the contemporary sciences and knowledge, in serving the provisions of Sharia, as did former scholars of the nation who utilized the science of logic, philosophy and other sciences in serving the religion.

Out prior need today is the renewal and rejuvenation of many issues of economic, political and social jurisprudence away from extremism or isolationism on the obsolete and old fashion ideas, since evolution is the law of universe till the end of time. This is undeniable right that is no sane, scholar or jurisprudent may deny, and everyone decided that clinging to the traditions absolutely shall be a religious delusion and mere unawareness of the purposes and intentions of the contemporary and preceding Muslim scholars.

Based on that rule, all the cases and dilemmas of divorce and all the explicit and metaphor cases shall be measured, and the explicit matter could be metaphor and thus lack the intention, and the metaphor may become explicit and dispense the intention^[46]. And it shall not be surprising if we learn the meaning of (fiqh) according to our predecessor scholars. Qutob Eddine Al Sunbati said: (Fiqh is the knowledge of analogue matters), and Judge Al Hussein Al Marozi said: (Fiqh is the introduction of the science of incidents to man, or the opening of the branches of science of incidents to man, while Ibn Suraqa said: I consider Fiqh as extraction, which was also agreed by Ibn Al Saamani who said: it is the extraction of a problematic matter from a clear matter^[47], thus, the one may not be a jurisprudent, unless he knew how to extract provisions and being aquatinted with the analogues, even if he memorized many of Sharia rules, and perhaps this is the meaning of

⁴⁵ Azmet El-Aql El-Mouslem/ Abdul Hamid Ahmed Abu Sulaiman- Jordan- Maktabet El-Manar 2nd Edition 1412AH/1992 AC. P188.

⁴⁶ Differences/ Ahmed Bin Idris El-Qurafi- Beirut- Dar El-Kotob El-Elmiyeh- 1st Edition 1418 AH/1998AC.1/321.

⁴⁷ El-Manthour Fi El-Qawaed/ El-Zarkashi. 1/67.

the Hadith of Profit Mohamed Peace be Upon Him: (There is a lot of Fiqh holder, but not Faqih)^[48]. It is imperative for Faqih to be trained in all kinds of provisions, and he must learn the most important thing that Sharia scholar shall acquire, which is known today as the Fiqh of self or psychology. This is what caused Imam Abu Hanifa to define the Fiqh as “the knowledge of the rights and obligation of the human being^[49]”

3.1.4 Fourth Question: *The Reason (Mind) according to Sharia*

The one who is studying the Holy Book and the careful reader thereof shall find numerous verses calling for using the mind, which was made in a variety of means clear to anyone who understands the Arabic language in which the Holy Quran was revealed. The word Basar (vision) and seeing and using vision and consideration, took the lead as it was mentioned one hundred and ninety-nine times, then came Nathar (sight), where it was mentioned one hundred and twenty-nine times, and followed by the word Aql (Mind), where it was mentioned twenty-five times, and then the word Fiqh (jurisprudence), where it was mentioned twenty times, was equated with the word Hikmah (wisdom), then the word (thought) eighteen times, and the Dabura (deliberate), where it was mentioned four times, and then the word Shura (consultation) as it was mentioned three times, and the word Olo Al-Amr (ruler) which was mentioned two times. I did not mention the word (knowledge) whereas, because this word includes the Divine knowledge and the human knowledge, and was contented with what I said, for the fact that all of the above mentioned acts and any of the matters derived therefrom are issued through using reason. And if the text was available, then it shall be in vain to ask for thinking and reflection.

The words of the interpreters agree on this matter, because the language books have made it abundantly clear that the projected meaning is continuously sought from the point of reason where there is no text. And to that effect, I will introduce the meaning of what I have mentioned, referring to the linguistic meaning and what some interpreters have gone through.

Al-Basar (Sight): Is the sense of the eye, and concerning the heart it shall be gaze and notions. It is the doctrine of the heart, acumen, and Al-Tabasur (foresight): meditation and recognition, and Recognize: verify^[50]. Ibn Fares said: Al-Basirah (Insight): is Proof. And the Arabs say that I saw someone with sight, which mean with gazing and concentration and staring^[51], and hence, the blind is guided by mental or physical tools other than eyesight. And Al Qurtobi stated in clarifying the Verse” Now have come to you, from your Lord, proofs (to open your eyes): (Al-An'aam 104), i.e., proofs and evidences, by which a man can see and infer. And the insight is the conspicuous argument^[52]. It is stated that Mujahid explained the verse (possessors of (Hands) Power and Vision.) (Saad, verse 45): the hands: is the strength, and vision: is the reason (mind). And so is the sight which means the reflection and inspecting an object.^[53] Abu Hilal Al Askari said: viewing is the perception of

⁴⁸ Part of Hadeeth Told by Ibn E-Jaffan in Sahiheh from Zaid Bin Thabet. No. (3630).

⁴⁹ El-Manthour Fi El-Qawaed 1/68.

⁵⁰ El-Qamous El-Muheet/ Mohammad Bin Yaqoub El-Fairouz Abadi- Beirut- the Arabian Establishment- None. P1/387.

⁵¹ Maqayes El-Lougha P.118-119.

⁵² El-Jame'e Liahkam El-Qura'an/ Mohammad El-Qortobi- 4/57.

⁵³ El-Aqel wa Fadloh/Abdulah Bin Mohammad Bin Abi El-Dounia- Egypt- El-Qura'an Library- None. P. 25.

an object by sight or notion, and both types are required to understand the meaning^[54]. Abu Al Sauod in explaining the verse "Do they not look at the Camels, how they are made," "Do they not look, the meaning is the look of reflection and consideration of how Allah created these witness creatures^[55]. And such meanings included reflection: which is looking at the outcome and the consequences. Ibn Attiya said in an explanation of the verse (Do they not they consider the Qur'an carefully), that it is an order for looking, sighting and diligence^[56], because reflecting the Quran shall show its lucid proof and shiny light, thus, it was used it in every notion and reflection. As well as thinking it is the frequent looking and to asking for meanings by the heart. The Holy Quran indicated to this matter as order, reprimand and reproof^[57] (Do not they remember) (Al-An'aam 50), and (Thus Allah makes clear the signs for you, so that you may reflect.) (Heifer 266). And concerning Istinbat (inference) it is taken from the word (Nabata) which means extracting water when a well is excavated first. It demonstrates jurisprudence or lack of text and consensus. And it is attributed to describe the outcome of the man's mind as result of his sharpness, his intelligence, clarity of mind and acumen^[58]... As for consultation (Mashora), it is stemmed from Shurt Al-Asah (Take the honeycomb from the hive), as if the inquirer takes the opinion from others, because the advice is to refer to the others for knowing their opinion in the current matter presented to them, and stating what they consider as a matter of interest, and this is a good reference as he compared a good advice to eating honey and extracting it from its combs and sources^[59]. That is why Allah Almighty ordered his messenger to consult the Noble Companions, where he said: (consult them in the conduct of affairs) (Al Imran 159) and they were consulting on the divine objectives and purposes, and he sees their words as the repository of secrets, then Allah the Almighty revealed to him by way of them, as he revealed to him by Gabriel. How far this connection is and this advocating and cooperating which lead to knowledge and science, from philosophers and holder of the independent ideas and opinions^[60]. In all these meanings, a reference is made to the fact that Allah the Almighty, who has favored the human with reason (mind), did not create it in vain or without a function. And not all the provisions in human life are provided for, thus the commanded person may not be left without rules, major or minor, because the minor for someone is major for another. Thus, the function of consideration requested by the Legislator and all the other words denoting that meaning were to distinct the right from falsehood and to separate them by specifying the consequence whether it was advantages or disadvantages. However, the considerer could be rightful or wrongful but in both cases he shall be rewarded, as he had done his assignment the best, and his destiny shall be up to his creator, who would reward both. Then how great is the sight or consideration which reaches to the thought of heart, truthful knowledge and predominance of assumption, where the legislator ordered and guided. And

⁵⁴ Maqayes El-Lougha P. 997.

⁵⁵ Ershad El-Akl Al- Saleem/Abu El-So'oud Mohammad Bin Mohammad El-Imadi- Beirut- Dar Ehyia'a El-Torath El-Arabi – None. 9/151.

⁵⁶ El-Moharrer El-Wjiz 4/187.

⁵⁷ El-Mosbah El-Muneer/ Ahmed Bin Mohammad El-Fayoumi- Beirut- Lebanon Library 1987 AC. P. 182.

⁵⁸ Lubab El-Ta'aweel Fi Ma'ani El-Tanzeel/ Ali Bin Mohammad El-Khazen- Quest of Mohammad Shahin-Beirut- Dar El-Kotob El-Elmiyah 1st Edition 1415 AH. 1/403.

⁵⁹ El-Mosbah El-Muneer P124, free quotation.

⁶⁰ Kashf El-Fadayh El-Younanyah. P. 253.

anyone who wants to succeed must strive, utilize his reason and seek to get the fruit of that effort instead of being inactive and failing to pursue the causes of righteousness and success. It goes without saying that the people of the reason have their own ways that the people of traditions and news do not know, whereas the people of traditions and news have their ways that may not be comprehended by mere reasons and minds, however, the good ones of one party shall believe the good of the other. Moreover, the types and methods of knowledge include special and common, and the common is shared by all mankind, or a part thereof^[61]. However, the evidences of the people of conclusion may converge with the evidences of people of traditions and news, due to fact that minds are a gift from Allah to the servants in order to realize and attain their interests, and the Sharia news is a lucid gift from Allah to his servants which not need thinking or reflection, while what stemmed out of mind needs such thinking and reflection, in addition texts are fixed and the essence of them may not be denied. As for the fruits of brains they may turn upside down, and the mind requires breaking out and relying on divine revelation to reach the activity of legislation and the harmony with all developments in time and place. Therefore, the text is the basis, while the mind is preserving and complementary to all foundations, which clarifies to us the why the creator who sent down the provisions, requested the servant to use consideration, foresight and reflection, and to agree that using the incapable minds, which are ignorant of the sharia ways, is unmanageable^[62].

3.1.5 Fifth Question: *The Attitudes of Islamic Sects Concerning Reason (Mind)*

The path of the ancestor and Imams of the nation is that Allah the Almighty is continuously doing what he wishes, and that the matter of choice and elective, are attributed to him, and that he is still has his own and actual characters, and there is no incentive motive for him to create, nor compelling need^[63]. And this fact was the same beyond the age of the followers, where the sects or opinions under the influence of philosophy, speech science and the sciences of former deviated religions, was demonstrated. And we shall confine talking about the sects that has not reach the point of embodiment or assimilation, such as the Ashaairah, Matreedi and Mu'tazilah, The Ashaairah, who represents the opinion of the righteous predecessors who were of the opinion that Allah is the creator and the owner of everything, and that what he wishes was done, and what he did not wish was not, and he is the creator of everything with his capability and will, and prove what Allah created from reasons and obstacles. Such statement, was conveyed by Ibn Taymiyah, and is the accurate and reasonable straightforward opinion.

Moreover, Allah, is not obligated to do the righteousness and the fittest of his servants. And they do not approve the mental acceptance and rejection, rather they consider that what the legislator ordered is good, and what the legislator forbade is disagreeable, i.e., this is only attained through Sharia, and the mind is deficient to do so^[64].

⁶¹ El-Jawab El-Sahih Limn Baddal Din El-Masih/ Ahmed Bin Taymyieh- Al-Majd Commercial Print Houses- None. P4/301-302.

⁶² El-Mankhoul/ Mohammad Bin Mohammad El-Ghazali- Quest of Mohmmad Hipto-Damascus- Dar EL-Fikr 2nd Edition 1400AH/1980 AC. P494.

⁶³ Lawame' El-Anwar El-Bhyieh Wa Sawate'e El-Asrar El-Atharyieh/ Mohammad Bin Ahmed El-Safarini- Beirut& Riyadh- Islamic Bureau & Dar El-Khitani 3rd Edition 1411AH/1991AC 1/280.

⁶⁴ Lawame' El-Anwar 1/328.

Whereas, the Matreedi are the people attributed to Abi Mansour Matreedi, and the scholars practically unanimously agreed that the views of Abu Hanifa in beliefs were the origin from which the opinions of Matreedi were derived. His approach was that he gave the mind an unlimited power in judging things by under the guidelines of mind. He judged the allegorical matters in Quran according to the decisive ones. Hence, Al-Kawthari indicates: "Al-Ashaairah are in the middle place between the Mu'tazilah and the Hadith scholars, and Matreedi was between the Mu'tazilah and the Ashaairah"^[65]. Moreover, Matreedi also goes on to the impossibility of the creation of his deed out of interest, which is contrary to the accord of the predecessor. Sheikh Al Islam Ibn Taymiyah said: The Sunnis followed two statements in explaining the deeds and rulings of Allah: the major of them depended on diligence and wisdom^[66], which was confirmed by Abdulsalam Al Laqani, who quoted some statements of the scholars saying: Indeed, the justification of certain acts, particularly Sharia rulings by the wisdom and interest, is obvious, and does not disprove Ashaairah's doctrine, as they approve wisdom and interest in the same order, since they deny futility in the rulings of Allah the Almighty, and also the purpose^[67]. As for Mu'tazilah, they approved that the good of knowledge and thankfulness, and evil of polytheism and injustice are recognized by necessarily by reason. Abdel Jalil stated in Sharhu Al-Lumaa: The actions of the persons committed to observe sharia provisions as considered by Al-Mu'tazilah may be divided in four categories, the first of them: the matters which goodness is well known by reason and there is no room for traditional statements therein, such as thanking the Graceful, Justice, equity and knowledge; and the second: the matters which malice thereof may comprehended by reason, which are against what we mentioned, such as injustice, denial of Graceful and ignorance; and third: which is recorded in Allah knowledge that doing it shall lead to what is good in mind, thus, they consider it good, but they know its goodness only after the sharia so states, such as prayer, fasting, zakat and Hajj; and the fourth: which is recorded in Allah knowledge that it is disagreeable and may not be known until the a traditional statement is received, and to neglect it is a call for malice in the mind such as adultery and drinking alcoholic beverage. The meaning of the statement of Mu'tazilah: such matter is good or evil by reason is that they realize it from them without any informant^[68]. And thus Mu'tazilah deems the reward and punishment concept established and constant prior to the arrival of rulings. While, in the opinion of Ashaairah, they are confirmed only by Sharia. Mu'tazilah based this view on the foundation that the wisher of the evils and bad deeds is Satan, and the wisher of good deeds is the Most Merciful^[69]. However, Al-Ibadhi concurred with Mu'tazilah as indicated and pointed out in the books of belief. Moreover, Wahabi belief indicated that the reason is a guide to the

⁶⁵ El-Mankhoul P.8 afterwards, Hejet El-Islam El-Ghazali has prolonged the refutation of objectors of Motazaleh etc.

⁶⁶ This Is The Doctrine of Predecessor and Successor/ Ibn Khalifeh Alewi- Damascus- Zaid Bin Thabet Print House 1398AH. P. 139.

⁶⁷ Lawame' El-Anwar 1/285.

⁶⁸ Fateh El-Mjeed Be Kfayet El-Marid/ Abdul Salam Bin Ibrahim El-leghani- Quest of Dawod Ali El-Fadel- PhD Thesis- Morocco- Dar El-Hadeeth El-Heshyieh 1399AH/1979AC. 2.75. Ibn Hazem objected the ancestors and he said: "No Reason for What he did, and no reason for he did not do".

⁶⁹ El-Bahr El-Mohit Fi Ousol El-Feqeh/ Mohammad Bin Abdullah El-Zarkashi- Cairo- Dar El-Ketbi 1st Edition 1414 AH/ 1994 AC. P.180-181.

oneness of Allah, and that a necessary rule of minds that there is no product without a producer, no effect without influence, and such producer or influence should not be of the same nature of the product. The author made the mental inevitable matters (which may not be perceived to be lacked in mind) the first principle of the knowledge of monotheism^[70], which was emphasized by Sheikh Al Khalili in his commentary (Ghaytu Al Murad fi Nazm Al Itiqad), where he referred to the statement of Ibadhi of the qualities of Allah and impossibility of seeing him and believing in the creation of Quran^[71]. The Imami Shia, who believes in the Imam infallibility (Ismat Al-Imam), have considered that the evidences of the provisions are the Holy Book^[72], the Sunnah, the consensus and the Reason^[73]. They said that the knowledge of Allah is imposed on all persons committed to observe sharia provisions, by reason, regardless of the ruling of Allah, by ruling the reason (mind) on every person committed to observe sharia provisions to think about the attributes of Allah, make him knows those attributes as a must^[74]. Sheikh Al Mufid (Mohammad Bin Mohammed Al Akbari, 423 AH) was the first to mention the reason. He indicated that the trails to the evidenced of the three rulings (the Qur'an, Sunnah and Consensus) are the tongue and the traditions. The first of them is Reason that requires tradition. Then came Al Ajli (Mohammad bin Idris 597 AH) as he indicated that if the three evidences were unavailable, then the evidence of reason should be adhered to^[75]. As for the people of apparent text, some of them are Sunnis who adhere to apparent meaning of the texts, and believe in them, whether comprehensible or incomprehensible, and they rely on them in statement, belief and protesting without interpretation^[76]. While Mu'tazilah sects agreed to deny knowledge and ability from the attributes of Allah, and that the Quran is as creature, and that Allah is not a creator of the acts of his servants^[77].

THE SECOND TOPIC

4.1 Sub-Evidences in Which the Reason (Mind) Intervenes

4.1.1 First Question: *The Role of the Reason (Mind) in Defining the Interests and Corruptions:*

First of all, we should remember that the preservation of reason is one of the essential interests that should be conserved, which may be not done but for that the assignment of mind is of no less significance than the standing of the mind itself. And the abandonment of the mind and its role or filling it with myths and mythologies and do not

⁷⁰ Fateh El-Mjeed Be Kfayet El-Marid 2/112.

⁷¹ Whabyieh Doctrine/ Nasser Bin Salem El-Bahlani- Musqat- Musqat Library 1st Edition 1424 AH/2003 AC. P. 62, 71.

⁷² Sharh Ghayet El-Murad/ Ahmed Bin Hamad El-Khalily- Sultanate of Oman- Maktab E-Ifta'a 1431AH/2010AC. P. 28, 35, 72.

⁷³ Evidences Of The Islamic Solution/ Yousef El-Qardawi- Cairo- Wahbeh Library 3rd Edition 1424 AH/2003 AC. P. 176.

⁷⁴ Mukhtasar El-Tohfah El-Ithnai Ashariyah/ Abdul Aziz El- Dahlawi- Brief Mahmoud Al-Alousi- Quest of Moheb Eddin Al-Khateeb- KSA- Presidency of Scientific Research 1404 AH. P. 51, 70.

⁷⁵ Human and Reason, pp. 59 – 60. Free quotation.

⁷⁶ El-Kawkab El-Sadi Fi Haqiqet El-Joz'e El-Ekhtyari/ Abdul Ghani El-Nabulsi- Aleppo- 1st Edition 1449 AH/1931 AC. P. 13.

⁷⁷ Muslims and Polytheists' Beliefs/ Fakr Eddin El-Razi- Beirut- Dar El-Kotob El-Elmyieh 1402AH.1982 AC. P. 38.

improve it by consideration and thinking, are major sins, that is not less than hurting it by alcohol and drugs, especially since the fields thereof are not limited to aspect only. And perhaps some of the most texts that need beneficial consideration and interpretation, are the general, absolute texts, such as the order of justice and charity and granting the relatives, and the prohibition of harm and defiance^[78]. This comes from the fact that some of the sciences of Sharia are tools of happiness hereafter, and others are purposes^[79]. It is not conceivable to achieve the perfection of the Sharia except by adopting the rule of Ijtihad (the independent or original interpretation) and implementing it in the matters that has no text. Thus, the perfection is achieved by the comprehensive rules under which limitless matters happen. Henceforth, the mental provisions only cannot be sharia due to the fact that they are hypocritical, but they may be complemented by seen or conveyed evidences that agree on a definite meaning that implies decisiveness, since consensus has more power than disagreement as long as those meanings are stemmed from the evidences of Sharia and the comprehensive rules thereof, whether by the absolute interpretation or the acceptance or the appropriate description or the reclamation expressed by many scholars of principles as absolute interest. There is nothing wrong with applying suppositions concerning the sources of the sharia and its origins, because they rarely lie, and are frequently authentic and true. And thus if they were neglected for the fear of the rare case lying, then many interests shall be disabled for fear of the occurrence of a few rare corruptions, and that is contrary to the wisdom of Allah who enacted Sharia for it^[80]. And even though Al-Shatbi resolves that the principles of jurisprudence in religion are decisive and that the approved practice is that the suppositions shall never be principles. Then the non-decisive events that happened are based on the decisive ones, as the follow them, no according to the first intention^[81].

4.1.2 Second Question: *Demonstration of the Dependent Sources in Which the Mind Intervenes:*

Section I: Foundation of the Issue: prior deliberating the matter of interests and others, it is essential to determine the fact that since Quran in its words, meanings and methods is Arabic, then it is vital to follow the paths and behavior of the Arabs upon deriving and deducting any rules from it, and upon the determination of their meanings and conflicts in the sorts of communications particularly. Whereas, several people abstract the evidence of the Quran pursuant to the mind judgment regarding them not according to what is comprehended by the situation. And this is a major corruption and deviation from the intent of Legislator^[82]. Therefore, this is a lucid statement of many of the disputes occurred between the scholars of principles regarding the legitimacy of this or that behavior, and which clarifies to us what was made by Hijjat Al Islam Imam Al Ghazali when he gave a title to the disputable evidences as follows: (Matters believed to be of the

⁷⁸ El-Maqased Theory for El-Imam El-Shatebi P.261

⁷⁹ El-E'tisam/ Ibrahim Bin Moussa El-Shatebi- Beirut- Dar Ihya'a El-Torath- 1st Edition 1417 AH/1997 AC. 2/478.

⁸⁰ Qawaed El-Ahkam/ Ezz Eddin Bin Abdul Salam El-Selmi- Dar El-Jil 2nd Edition 1400 AH/1980 AC. 2/60.

⁸¹ El-Mowafaqat/ Ibrahim Bin Moussa El-Shati- Beirut- Dar El- Ma'arefeh- 3rd Edition 1417 AH/1997 AC. 1/33 see 3/24 about Evidence for not to contradict the Legal evidence with Mental Issues.

⁸² El-Mowafaqat 1/41 + 2/375.

principles of evidence but not of them, and he called them delusional evidences)^[83]. Nonetheless, this does not prevent the scholars from looking for the facts mentioned in the Quran in the sense of argument, evidence and proof, whether individually or collectively. Allah the Almighty explained, by his sharias, that he intended to establish justice among his slaves and to establish equity amongst people. Thus any way used to establish justice and equity are religious ones, and not contrary to it^[84]. Al Iz Bin Abdul Salam inquired about the words of the scholars that what is required by certainty shall not valid except with certainty. And said: The answer for that shall comprise two aspects, one of them is that the certainty is figuratively taken to the supposition considered by sharia, and the second is that to say is Allah the Almighty has imposed on us in the words and deeds what we think and believe to be the duty, and if the certain matter was the supposed and assumed, then the person committed to observe sharia provisions, shall be certain that the matter affecting him is supposed to affect him, and that Allah has entrusted him only with what he thinks, and that the decisive ruling upon being suspected, is not related to the suspicion, rather it is related to availability of suspicion, and there is deference between the certain availability of suspicion, and the deceive rule of the suspected matter^[85]. This is supported and confirmed by that the general consideration in this evidence is in the matter realized by reason, and goes on the reasonable occasions, which if offered to the minds were received with acceptance, and they are not related to worship, and the course of the Sharia matters^[86]. However, they are due to the preservation of an essential matter, and removing an essential constraint in religion, which is fall under the principle of “That without which an obligation cannot be performed is itself an obligation”. And thus they are matters of means, and not purposes, which do not contradict any origins of the Sharia, and is not in conflict with any of its evidence. Ibn Al- Arabi stated words quoted by some of the late scholars purporting that the texts are limited and the incidents are not limited, and it is impossible to include the limited in the unlimited^[87].

The Noble Companions opened the doors of Ijtihad (the independent or original interpretation) and set the path and displayed it. Does a sane person doubt that the Prophet (peace and blessings of Allah be upon him) said: (The judge may not judge between two people if he is angry)^[88]. This was because anger is bewildering his heart and mind and prevents him from broad comprehension. It prohibits him from consideration, and blocks the path of knowledge and intention, and anyone who restricts the prohibition to anger alone without confusion, fear, hunger, thirst and the occupied heart (mind) that hinders the understanding, then his Fiqh and comprehension are poor^[89].

⁸³ El-Mustasfa/Mohammad El-Ghazali- Quest of Mohammad Abdul Shafi- Beirut- Dar El-Kotob El-Elmiyeh 1st Edition 1413 AH/ 1993AC. P165

⁸⁴ El-Toroq El-Hakimeh/ Mohammad Ibn Qayyem Al-Jouzeh- Quest of Ahmed El-Zou'bi- Beirut- Dar El-Arqam 1st Edition 1419AH/ 1999 AC. P. 37, 39.

⁸⁵ Major Rules/ Ezz Eddin Bin Abdul Salam- Beirut- Dar Ibn Hazem- 1st Edition 1424 AH/2003 AC. P332.

⁸⁶ El-E'tisam 2/341.

⁸⁷ El-Mahsoul Fi Ousol El-Feqeh/ Abi Bakr El-Arabi- Amman- Dar El- Bayareq 1st Edition 1420AH/ 1999 AC. P125.

⁸⁸ Fateh El-Bari 13/117.

⁸⁹ E'lam El-Mouaqe'en/ 1/166.

Al Shatbi deliberated the issue of non-contradiction of the cases of the minds of the legal evidence in detail^[90]. And the evidences that fall under this question are all titled (Absolute interests), which have similar names as considered by scholars of principles when it is indisputable to apply term and thus they gave it the name of the appropriate absolute, absolute inference, acceptance, reclamation and diligence (the independent or original interpretation). And we shall explain the meanings of these manners concisely.

Second II: The Absolute interest, reclamation, inference and absolute appropriate are all terms used by the scholars of principles to express a way of extracting Sharia ruling from cases that the Legislator did not give any consideration, cancellation or negation. Al Zarkashi indicated that: The Absolute interests, which are called also absolute inference..., and Imam of Al Haramain and Ibn Al Sammani called it inference. And Al-Khawarizmi expressed it in Al Kafi as reclamation^[91]. However, scholars have defined the interest as pleasures and causes thereof, and joys and causes thereof, and the disadvantages are the pains and causes thereof, and the sadness and reasons thereof^[92]. Moreover, Al-Tufi said: It is to bring benefit or to remove harm, because the human needs in his religion and life, and in his sustenance and the hereafter are to attain good and remove evil. And you may say: by the occurrence of the appropriate and prevention of the inappropriate matters^[93]. And perhaps, what Imam Al Ghazali considered of ejection of the previous meaning and saying that: the preservation of the intent of Sharia, is more accurate in terms of meaning and significance. Though, he said: If we give the envisaged meaning and the appropriate in Al-Qiyyas section we shall mean this type^[94]. This meaning stated by Al Ghazal may be the reason of discarding the division of the interest into an essential, nullified and necessary and unnecessary absolute interest, and considering it arbitrary and artificially, and considering the path to know the interests more general than this and closer by saying: Sharia consideration of interest and corruption entirely are consensus^[95]. It is well known that Al Tufi is one of the most scholars of Islam adherent to the interest, and preferred it to the text, which no one else has approved, and that is the benefit for which there is a cause and for which there is a rule. And it is not meant, when we called something an interest, that it is in itself righteousness, in the same manner as the cause implies its effect by itself. In this sense, they said that righteousness and kindness are not assigned a certain type of acts. But, whenever Allah the Almighty knows that if he confirms it, the goodness of the commanded persons shall be achieved, then the same shall be deemed an interest. However, the occurrence shall defer regarding the known matter^[96]. We note that Ibn Ashour of the hadith scholars separated the interest into two parts: the first one: the natural (innate) one which implies the inclination of souls to attain it, and the second which has nothing to do with nature, and the commanded do not have a clear benefits therein. He gave an example

⁹⁰ El-Mowafaqat 3/24.

⁹¹ El-Bahr El- Muheet P. 83.

⁹² Qawaed El-Ahkam 1/11

⁹³ Sharh Mukhtasar El-Rawdah/ Sulaiman El-Toufi- Quest of Abdullah El-Turki- Beirut- Al-Risaleh Establishment 1st Edition 1410A/1990 AC. 3/204.

⁹⁴ El-Mustasfa P. 174. Al-Shokani Attributed this saying to Al-Kawarezmi/ Irshad El-Fohol 2/168.

⁹⁵ Sharh Mukhtasar El-Rawdah 3/ 214.

⁹⁶ El-Talkhees Fi Ousol El-Feqeh/Abd El-Malek Abdullah Al- Jowayni- Quest of Abdullah Al-Omari- Beirut- Dar El-Basha'er El-Islamyeh- None. 3/163.

of the first one by eating food for preserving and establishing life, and an example of the second one: the expansion of roads and balancing them, and the appointment of the guard at night, and then related between the request of interests and the prevention of malicious, and between the purpose of the legislator to consider instinct^[97]. And whereas, this is the ultimate purpose of the universal Islamic Sharia, then the world may be reconciled only by the righteousness of its members. He began to call for reforming the belief that reforms the principle of human thinking what would lead it to the right thinking in the conditions of this world. Then he treated the man by cleaning himself and purifying his heart, because the heart is the engine of man to good deeds. He then remedied the deed^[98]. Thus, the meaning of absolute interests and corruptions is realized, so that the interest is all that belongs to the establishment of human life and the completion of his existence, and the fulfillment of what is required by its sensual and mental descriptions at all, so that he would be in wellbeing. And corruption is every pain and suffering, whether physically, mentally, psychologically, or spiritually^[99]. It is clear from this that interests are linked with the ranks of the general rules and the means to achieve them, and that they lead to those goals and general rules. Hence the link between the worship and obedience of Allah and wishing good to people, to disobedience of Allah and damaging people. It inspires in the souls of its adherents the love of justice, brotherhood, equality, hatred of injustice, tyranny, arrogance and transcendence, and fills their hearts with compassion and affection^[100]. Shaykh Taqi al-Din al-Nabhan opposed scholars in the number of necessary interests, as he brings them to eight, adding to them: preserving the government, preserving security and preserving dignity and humanity. He also differed between the purpose of Allah from the enactment of a particular rule and the purposes of the sharia as a whole^[101]. And I say: Is not Sharia a set of partial detailed provisions? How can they be gathered under a specific purpose and assigned under a specific purpose?

And scholars agree that the absolute interest is unrestricted female name, which means softness and relaxation in addition to compassion and deliberation^[102]. Its non-restriction comes from the absence of special evidence that denies or cancels the restriction. However, the Sharia considered it, in its most comprehensive genre, as a provision. This type of provisions is more restrictive than the analogy in which the cause is not stipulated, and is associated with a partial provision established in a suppositive text. The same caused Ibn Ashour to say: If you said that it is valid to compare the interest of a comprehensive incident happened to the nation, which has no provision, to a comprehensive case which consideration is established in the Sharia, by extrapolating the evidences of the Sharia, which are decisive or likely to be decisive, is more appropriate, and more comparable and more related to Sharia argumentation.^[103] Some principles scholars have argued that it is

⁹⁷ Maqased El-Shareah El-Islamiyah/ Mohammad El-Taher Bin Ashour-Tunisia- Tunisian Company for Distribution- 1399 AH/1978AC. P73,77 Free quotation.

⁹⁸ Ibid P. 64.

⁹⁹ El-Maqased Theory of El-Shatebi, pp. 234 – 235.

¹⁰⁰ El-Maqased El-Ammeh Lel Shareah El-Islamyeh P.221.

¹⁰¹ El-Masaleh El-Morsaleh/ Mahmoud Abdul Karim Hasan- Beirut- Dar El-Nahdah El-Islamyiah 1415 AH/ 1995 AC.

¹⁰² El-Mou'jam El-Waseet/ Ahmed Hasan El-Zayyat & Co- Cairo- Islamic Library 1st Edition 1380 AH/1960 AC. P344 Free quotation.

¹⁰³ Maqased El-Shareah El-Islamiyah/ Mohammad El-Taher Bin Ashour-Tunisia- Tunisian Company for Distribution- 1399 AH/1978AC. P. 73,77 Free quotation.

not required in the provision of the interest to look at the gender of the provision, but rather it is sufficient to consider reasonable and traditional matters in analogy, because we necessarily know that the companions did not give regard to the conditions considered by the jurisprudents of the time, but they took into account the interest.^[104] There is no doubt that the view of majority of scholars of looking into the interest and to what extent the sharia texts recognize their types, and linking them to the principles and comprehensive rules, is the most prudent approach which prevents the bad faith people (people of bid'ah) from intervention. This does not preclude the interest from entering the most aspects of the life. So that some researchers consider judging with the absolute interests nine-tenths of knowledge^[105]. In this sense, the interest can be called good, welfare and kindness, while the corruption is called evil, bad and vice. And there is no doubt that the attention of the legislator and rationalists to avoid the evils is greater than gaining interests^[106]. This applies to what Al-Asbahani said in the definition of righteousness by saying: It is the awareness of and seeking of the good deeds, as well as civility. He considered civility the ability to the extract what is better in the attainment of good, which is an extra benefit on worship, and like is wisdom, which means everything good and every good deed. It was said: It is to follow the Creator in politics as much as human capacity^[107]. This is the common interest and the common good that benefits every member of society. Abu Hazim said: Two things if you do you will achieve the good of this world and the Hereafter, it was said what are they? He said: Bear what you hate if Allah loves it, and leave what you love if Allah hates it^[108].

Section III: Reclamation: In Arabic it is pronounced (Istislah), and rhymes Istif'aa, which root verb are Salaha and Yoslehu (makes good), which is the follow-up of absolute interest. Sharia or the independent religious scholar (Mujtahid) is seeking to achieve benefits to the people obligated to observe religious commitments by following and observing the said interest^[109]. Imam al-Juwaini defined reclamation, which he called inference by saying: It is a sense referring to the provision and appropriate thereto as required by mental thought without finding an agreeable origin, and which is explainable^[110]. Al-Juwaini added in his book Al-Talkhees (The Summary) that the inference is hesitant between searching, looking at the reality of the subject of research and the question of the seeker of the evidence^[111]. And thus it is a request to indicate the meaning, and is not without the process of extracting the meaning or knowing the rightful meaning. Accordingly, it must meet two criteria: extracting the meaning, and testifying its

¹⁰⁴ El-Tahseel Mn El-Mahsoul/ Mahmoud El-Armawi- Quest of Abdul Hamid Abu Zaid- Beirut- El-Risaleh Establishment 1st Edition 1408 AH/1988 AC. 2/333.

¹⁰⁵ Economic Boycott... Reality & Hopes of It/ Abed El-Sa'adoun- Riyadh- Dar El-Tabe'en for Publishing 1429AH/ 2009 AC. P238

¹⁰⁶ Sharh Tanqeh El-Ousol P.14.

¹⁰⁷ Al-Thareah Ela Makarem El-Shareah P.81/ 38/ 108 Free quotation.

¹⁰⁸ Sharh El-Sunneh/ Al Hussain Bin Masoud El-Baghwi- Quest of Souaib Arnaout-Beirut- Islami Bureau 2nd Edition 1403AH/1983 AC. 14/309.

¹⁰⁹ Nezhet El-Khater El-Aater/ Abdul Qader Ibn Badran El- Doumi- Beirut- Dar El-Kotob El-Elmiyeh- None 1/411.

¹¹⁰ El-Borhan Fi Ousol El-Feqeh/ Abdul Malek El-Jowaini- Quest of Salah Awidah- Beirut- Dar El-Kotob El-Elmiyeh 1st Edition 1418 AH/ 1997 AC. 2/161.

¹¹¹ El-Talkhees 1/119.

correctness^[112], since it is an attempt to reach the sharia provision on the basis of the rules and not on the basis of the considerable evidence considered along with not opposing them.

Al-Shaafa'i called the analogy indication, because it is examination and consideration. Induction is called analogy because it includes justification^[113]. Sheikh Abdullah Al-Shanqiti stated that all evidence outside the four evidences is inference. Thus he entered the consensus of Al-Madinah's people, Al-Kufah's people as considered by some scholars, the logic analogy including its two types: the Conjugate and the exceptional ones, sayings of companions, absolute interests, continuity (Istishab), original innocence, attributions, extrapolation, Prohibition of what may lead to committing sins, acceptance, choosing what is easier, inerrancy, consensus of the ten persons, consensus of the four caliphates. Most of those evidences are unagreeable, and few are agreeable such as logic analogy, and absolute analogy since it is considered decisive by most scholars^[114]. The acceptable inference is what takes the principle into consideration and matches the meanings. Al-Asfahani limited the inference in three types: the correlation between two provisions without specifying a common cause, and the continuity, and the sharia of previous nations, and made it among the useful methods that lead to the provisions^[115]. Ibn Qayyim al-Jawziyya said that the entire inference is based on equalizing similar matters, and differentiating different ones. Thus, it is either inferring a specific object by a specific one, general by specific, specific by general or general by general. These four are the main inference methods. Inferring a general matter by a general one is inferring the obligee by the obligation, since every obligee refers to its obligation. And if the concurrence is reciprocal, then each one is an evidence of the other and evidenced by it^[116]. Al-Shatiibi explained the correct method of inference that prevents the people of bad faith from taking it. He obligated to take the inference like the people who knew well the Arabic language, comprehensive issues of sharia and its purposes, as the first salaf took it. However, the people of bid'ah did not reach the level of those who look into it comprehensively, either because they were not well informed about the language of the Arabs and its purposes, or because they did not take the knowledge of the rules of the principles by which sharia provisions are extracted, or because of both reasons^[117]. Yet, most scholars of principles confirm that the same is one of the considerable evidences, mostly needed by those who depend on tradition, since they need to use their insights and to think and deliberate. In addition, opinions must be approved by the shaira to be acceptable, but is shall not be acceptable in terms of text, but in terms of comprehensive rules, or in terms of the transfer of presumptive issues to other implied issues. Or it is unknown conclusion from a known one, and the provision may be the result of a similarity between two things, such that if one is existing the other shall be existing as well. It should be pointed out here that the

¹¹² El-Wadeh Fi Ousol El-Feqeh- Ali Bin Aqil- Quest of Abdullah El-Turkey- Beirut- El-Risaleh Establishment 1st Edition 1420 AH/ 1999 AC. P. 447.

¹¹³ El-Motamed fi Ousol El-Feqeh/ Mohammed Bin Ali El-Tyeb El-Basri- Quest of Khalil El-Mis- Beirut- Dar El-Kotob El-Elmiyeh 1st Edition 1403AH/ 1913 AC. 2/192.

¹¹⁴ Nashr El- Bonoud Ala Maraqi El-Sou'od/ Abdullah Bin Ibrahim El-Shanqiti- Morocco- Ministry of Awqaf- Fadaleh Print House- None 2/255.

¹¹⁵ Bayan El-Mokhtasar Sharh Mokhtasar Ibn El-Hajeb/ Mahmoud Abdul Rahman El-Asfahani- Quest of Mohammad Mazhar- KSA- Dar El-Madani 1st Edition 1406 AH/1986 AC. 3/249. 252.

¹¹⁶ A'alam El-Mouaqen 1/101.

¹¹⁷ El-E'tisam 1/149.

inference can not be adopted to prove the necessities, because if they could be inferred, then they would be a theory and not necessity. And what is perceivable by the simple mind's abilities is not inferable at all. Inference starts from these preliminaries, but reason may resort to sense primarily by way of extrapolation, to take note not to argue, like the extrapolation of a crystal clear issue but neglectful one^[118]. This is the view of the logicians, which is based on the fact that all that is every believable or deniable issue is confirmed only by way of inference, argument and proof. Wise people agreed on that the purposeful needs are achieved by senses with the help of minds, so that you can hardly find anyone who does not use inference to attain his interests with the help of mind. The unseen arguments were not arguments except by mental inference. And there is no way of knowledge except through the senses or inferring the sensible matters using the mental insight to percept the insensible ones^[119].

Section IV: Acceptation: In Arabic it is pronounced (Acceptation), and rhymes Istifaal, which means to consider something acceptable, in terms of language and adopted practices. Therefore, Al-Amadi defined it saying: It is an acceptance, or to think something is acceptable, i.e. what a man likes, such images and meanings, even if it is unacceptable by others^[120]. Al-Juwaini defined it as leaving analogy with what is acceptable reasonably. And the accepting person do not have to give a deniable evidence, rather it is a pure reasonable matter^[121]. In my view, these definitions can not be said for their absence of the disciplines of interest defined by the reason as mentioned earlier. Likewise it is defined as leaving analogy and taking what more acceptable to the people^[122]. Or it is leaving a provision for a more acceptable one^[123]. Perhaps the most appropriate is the one put by Abu al-Hasan al-Karkh. He said: To give a different provision to a matter, from the analogous matters, under a specific evidence^[124]. Al-Baji, who is a Maaliki scholar defined it as: To follow the strongest evidence, of two evidences^[125]. However, the view of Ibn al-Arabi may be different from Al-Baji's one. He said: The saying of Malik and his companions that: someone accepts something, means: It is better to leave the evidence, exceptionally, and to oppose it in some of its implications^[126]. If we return to the Ibn Abd al-Barr, we find him inclined to that the acceptance of the Maalikis is not provable. He mentioned that to use the razor to shave hair, was a Sunnah (Prophetic Tradition), and a ritual sometime, thus, it is a blessing and desirable in any case, and it is in no way disapproved, but it is not confirmed by an evidence from the book (Holy Quran) or the Sunnah (Prophetic Tradition) or consensus of

¹¹⁸ El-Had El-Awsati/ Sultan El-Omairi- Qatar- Ministry of Awqaf 1st Edirion 1432 AH/ 2011 AC. P291/298.

¹¹⁹ Taqweem El-Adelah Fi Ousol El-Feqeh/ Abdullah Bin Omar El-Dabousi- Quest of Khalil El-Mis- Beirut- Dar El-Kotob El-Elmiyeh 1421 AH/2001 AC. P.94.

¹²⁰ Al-Ihkam Fi Ousol El-Ahkam/ Ali Bin Abi Ali El-Amdi- Quest of Abdul Razzak Afifi- Beirut & Damascus- Islamic Bureau- None. P391.

¹²¹ El-Talkhees 3/310

¹²² Ousoul Al-Feqeh Allazi La Yasa'a El-Faqih Jahloh/ Ayyad Al-Salmi- Riyadh- Dar El-Tadmoriyeh 1st Edition 1426 AH/ 2005 AC. P.194.

¹²³ Risalah Fi Ousol El-Feqeh/ Al Hussain El-Akbari- Mekka- Quest of Mowaffaq Abdul Qader- Mekka- The Royal Library 1st Edition 1413 AH/1992 AC. P.77.

¹²⁴ El-Tabserah Fi Ousol El-Feqeh/ Ibrahim El-Shirazi- Quest of Mohammad Hito- Damascus- Dar El-Fikr 1st Edition 1403AH/ 1983 AC. P.493.

¹²⁵ Al-Isharah Fi Ma'arefet El-Ouol wa El- Wjzeh Fi Ma'ana El-Dalil/ Sulaiman El-Baji- Quest Mohammad Farkous- Dar El-Bashaer El-Islamyieh 1411AH/ 1991 AC. P.312.

¹²⁶ El- Mahsoul Fi Ousol El-Feqeh P.132.

the scholars, rather it is a view and acceptance, and may be preferred^[127]. Therefore, the acceptance, as considered by Ashhab, is to particularize a general evidence by a custom to attain the interest of the people. This is a clear indication that the Maliki scholars confused the principal terminology and did not pay attention to the importance of the art of formulating definitions. The confusion between reclamation and acceptance encouraged the expansion of the beneficial jurisprudence that made the companions of Malik acknowledge their imam's statement that the acceptance is nine-tenths of knowledge^[128]. Ibn Rushd said: The opinion is the belief in the rightfulness of a provision regarding which no text is stated. It comes only after the completion of diligence^[129]. It is not valid to consider and infer only by those who have an insightful minds. Al-Shatby after quoting the definition of Maalikis, said: It implies to give priority to absolute inference over analogy, since the accepting one does not depend only on his desire, rather he resorts to the purposes of legislator in general. And then he decided that the acceptance is not set aside from the implications of evidences, rather it is a look at the implications of evidence and their results. The opposing events recited about good ancestors, are only single accidents, and not evidences, so that we do not have to understand their meanings and approve what was decided by them^[130]. It appears that the Hanafis were more accurate in determining their purpose of acceptance. Al-Sarkhasi mentioned that the acceptance is divided into two categories: to follow the diligence and the major opinion in assessing what the legislator has made up to us (such as the alimony of divorce or the maintenance of the wife and children); the second is the evidence that does not oppose to the apparent analogy^[131]. Other scholars said: inspecting the two aspects of analogy and acceptance we note two things: First: If acceptance is more hidden and stronger than analogy, then it is right to call it acceptance, such as other forms of analogy and acceptance considering the next hidden meaning of analogy; second: analogy is stronger, then analogy is weighted^[132]. It is well known that the Imam Shafi'i used to say: Whoever accepts, is enacting provisions. Then he did not approve any form of acceptance. Yet, Imam Ahmad, as stated by Al-Tufi, defined acceptance as giving a different provision to a matter, from its analogous matters, under a specific sharia proof^[133]. And though acceptance is not an agreed upon principle, yet, it appears that the difference in terminology is the basis of the different opinions regarding it. And everyone agrees that if mere acceptance is accompanied reasonable acceptance, then there is no dispute. This is what caused Al-Shawkani to say: It is nonsense to state acceptance in independent research: if it related to the previously mentioned evidence, thus it is a repetition, and if it is irrelative to them then it is irrelative to Sharia itself^[134]. Hence, the word of acceptance has raised, among some scholars, the suspicion of legislation by desire and wishes: what is

¹²⁷ El-Tmheed/ Ibn Abdul Bar- Morocco- Ministry of Awqaf- Fadaleh Print House 2nd Edition 1402 AH/ 1982 AC. 6/78, 2/156.

¹²⁸ El-Maqased Theory of El-Shtebi. P70, El-Mowafaqat 4.565.

¹²⁹ Moqademat Ibn Rishd/ Mohammad Bin Reshd- Beirut- Dar Sader P.25.

¹³⁰ El-Mowafaqat 4/562- 566 Free quotation.

¹³¹ Ousol El-Sarkhasi/ Ahmed El-Sarkhasi- Quest of Abu El-Wafa El- Afghani- Haidar Abad- Committee for the revival of Ottoman knowledge 1414AH/ 1993 AC. 2/200.

¹³² Kashf Sharh Ousol El-Bazdouni/ Abdul Aziz El-Bokhari- Dar El-Kitab El-Islami- None- 4/3.

¹³³ Sharh Mukhtasar El-Rawdah 3/190. Nezhet El-Khater El-Aater 1/407. Introduction to Mathhab El-Imam Ahmad P.135.

¹³⁴ Irshad El-Fohoul 2/168.

proven by text is not an appreciation, and what overweigh and evidence over another can be called so.

Section V: *Shariah Politics*: In Arabic it is pronounced (Siyasah Shariaa): taken from the root Sas Arrajulu wa Sisa Alayh, means: to control someone or to be controlled by him. And someone is Kareem Al-Saws means he is of a noble nature^[135]. Hence, the Al-Saey (Horses Groom) is the one who trains the horses to return them to their good nature, and likewise is the Siyasah (Politics) of people. Yusuf al-Qaradawi defined it as the rules and resolutions taken by the ruler (the imam) to prevent a real or threatening corruption, or to cure a special situation^[136]. However, this definition is incomplete because politics should include obligate the ruler to reform himself, then his entourage, then his subjects, because Imamah (rulership) is succession of the prophet, in terms of protecting religion and regulating the life's issues, and the Ummah must nominate a ruler to undertake such duties, as per the scholar's consensus^[137]. This is evidenced by what was said in the noble Hadeeth narrated by Allah's Messenger (peace be upon him): "The children of Israel were ruled by prophets, whenever a prophet went, another came; however, there is no a prophet after me."^[138] That is, the prophets undertook their affairs as princes and governors do to the nation. Abdul Wahab defined it as a science that deals with the affairs of regulating the Islamic state, including the laws and regulations that agree with the sharia's bases, even so there is no specific proof for each matter^[139]. This implies that the government and the religion should cooperate in choosing the best person, who has the insight, justice and wisdom, and who is capable of managing the interests, regardless of the existence of a principal Sharia text. The same is achievable only by the one who started by reforming himself, thus he eliminates all his defects, so that he is able to reform his entourage and obligate to follow good manners that are good for the nation, and thus reclamation is attained step by step. One of the best ways to put political science and other sciences in practice is to reflect on people's situations, actions and behaviors, and to examine them and distinguish between their pros and cons, and then to strive to adhere to their virtues, and avoid their shortcomings^[140]. The honorable companions applied politics as per the interpretations of the Quran and Sunnah, then are the results they reached unchangeable comprehensive matters of Sharia, or are partial policies that change according to time and place? Ibn Aqeel al-Hanbali replied: "Politics is what achieves good and prevents corruption, even if it was not put by the Prophet (peace and blessings of Allah be upon him), nor revealed by Allah^[141]. And since this field is wide, and people may go astray and commit major errors therein, and neglecting it gets the rights lost, disables punishments and encourages the people of bad faith to intervene, then people have three approaches dealing with it: Undesirable neglect, so they have fully disregarded this issue; Exaggeration, so they

¹³⁵ El-Moushwaf El-Moulam/ 1/375.

¹³⁶ Legal Policy/ Yousef El-Qardawi- Egypt- Wahbeh Library 1st Edition 1419AH/ 1989AC. P.15.

¹³⁷ El-Ahkam El-Sultanyeh/ Ali Bin Mohammad El-Mawardi- Quest of Khaled El-Joumaili- Baghdad- El-Maktabeh El-Alamyieh 1409 AH/1989 AC. P. 15.

¹³⁸ Sahih Ibn Habbab 4/98, 6/34 Hadeeth No. (3112,4828)

¹³⁹ Legal Policy of Constitutional Affairs/ Abdul Wahab Khallaf- Kuwait- Dar El-Qalam 1408 AH/ 1988 AC. P.7.

¹⁴⁰ Message for Politics/ Mohammad El- Farabi- Alexandria- Shabab El- Jame'ah Establishment 1st Edition- None P.8

¹⁴¹ Al-Turuk Al-Hukmiyah P.38.

have overstepped the limits of Allah and exceeded the Sharia; And the course of mediation which is the course of right that lies between politics and Sharia: They have controlled wrong, followed and supported sharia^[142]. Ibn Aqil said that it was said about the permissibility to work in the sharia politics that it is the very firmness, and all scholars are on agreement on it. Al-Shaafa'i said: There is no politics except what is agreed by sharia. And Allah, the glorified, clarified by his sharia that his intention have been to establish between his slaves, and to cause people to establish fairness between themselves. Thus, every path of justice is a religion^[143], and none of the scholars disagrees that politics in the provisions is one of the sharia ways in which the Prophet (peace be upon him) and the successors, dealt with, regardless of the name of the term derived from the utterances, situations or customs. And that gives the rulers as much powers as people commit immorality and actions beyond the sharia, and clarifies to them methods of righteousness in it. This indicates that the judicial and legitimate provisions can change according to time and place. Ibn Farhoun allowed expansion in political provisions, due to the corruption spread in his time and its people. There is no doubt that had the judges of our time and their witnesses, officers and trustees been in old good times, they would have not been given offices, and would have been disregarded completely, since the good people of our time is the bad ones in those times^[144]. And how on earth the situation today? Ibn Khaldun had an opinion in the mental policy that corresponds to the due sharia politics that put by Allah the Almighty, and which is an obligatory on the subjects who would expect the rewards of such ruler after knowing their interests, which is contrary to the so-called civil politics, which is understood by wise men to be what should be followed by everyone the people of such society personally and ethically so that they do without the rulers. Which is called the “virtuous city”^[145].

4.1.3 Third Question: *Research Results*

First: To be adherent to traditions only, and to deal with all times and places according to one understanding which do not change, is a neglect of the practice of Allah in his slaves who made different and for that he created them, provided, everyone should remain within the circle of the comprehensive sharia provisions and its general rules, whether on the individual or collective levels. And in order to achieve security, succession and empowerment in the live, the ruler must reform the subjects through proper thought and guidance toward the beneficial industries, crafts and productive works, along with restraint from bad desires and vices.

Secondly: The general purpose of the shaira is aimed at attracting interests and preventing evils. This is only achieved only by building the earth and maintaining its prosperity by maintaining the lives of human beings, under a just and fair world order, away from the forms of violence and terrorism, and ignorance of interests recognized by sharia and reason. The path of interests is the broadest path the jurisprudent takes in managing the affairs of the Ummah when disasters and major events happen, if the paths

¹⁴² Tabseret El-Hukkam/ Ibrahim Bin Farhoun- Beirut- Dar ElKotob El-Elmyieh 1422AH/ 2001 AC. 2/115.

¹⁴³ Al-Turuk Al-Hukmiyah Pp. 28 – 29.

¹⁴⁴ Tabseret El-Hukkam 2/127.

¹⁴⁵ The Introduction P.238 free quotation.

are confused. If he does not follow this clear path and plain approach, he disables Islam from being a public and permanent religion^[146]. This means that the factors of flexibility in the Islamic jurisprudence must be activated, in order to be applicable, under special controls, on special cases according to time, place and human. So that we can fulfill the order of Allah which is justice and charity. And scholars have decided that those who practice the fatwa must deal with these three things, since there are many interests or evils change and are affected by the changing conditions and events, which requires reconsideration without exaggeration nor negligence, in order to fulfill the statement that sharia is valid for every time and place, and to emphasize leaving bad passions and desires and acknowledge slavery to Allah alone.

Third: The evidences of the mind that we have talked about before is not more than a kind of diligence, the one who was rightful therein had two wages, and the one who was wrongful had one. And diligence is to spare no mental efforts to reach a provision regarding the matters regarding which there is no stipulation. Imam Malik when gave priority to the interested, meant right only. And Imam Ahmad said: We continued to curse the people of opinion and they cursed us until Shafi'i came and mixed us up: he adhered to the correct traditions and used them, and then showed them that some opinions are necessary and provisions of Sharia are dependent on them, and it is an analogy on the basis of its principles, and extracted from it. And also he showed them how to extract them and to adhere to their causes and notices. He taught the scholars of Hadeeth that the right opinion is a branch of the original one. And taught the people of opinion that every branch follows the origin, and that it is indispensable to present the Sunnah and the correct traditions first^[147].

Fourthly: Absolute interests, inference, acceptation and reclamation are evidences resulting from the intervention of reasons, not in detailed, partial texts, but in the general rules, by taking advantage of the common meaning demonstrated by these rules and sharia comprehensive matters. It is thus the product of the cooperation between reason and sharia texts. This was not an all-new discovery, rather it is an understanding of the texts of sharia, which ordered us to deliberate, reflect, think, be rational, take advice, look attentively and consider things closely. Those orders are no more than the worship of the mind and the spirit, not the worship of the senses. By which the Lord of the worlds intended to bring the slave to true slavery, when he would know the creator through his creation, since such worship can not be bound by time, place, conditions or circumstances. And the universe and its content, and the earth and its composition have not been, and will be the same until the day of the resurrection. And all harmonious systems, human sees, which call for understanding through the mind, are evidences of mental consideration according their formulation, categories and indicators carried by the sharia texts in the Quran and Sunnah. And the sharia texts called the human being to use his mind to discover the universal laws, to make use of its fruits in the service of man. This leads us to say that one of the greatest mistakes in Islamic history is the call to close the door of ijtihad, which has had the greatest impact on the decline of the Islamic tide and Islamic thought, and to be occupied with

¹⁴⁶ Maqassad El-Shareah P.87.

¹⁴⁷ Tartib El-Madarek/ Ayyad Bin Moussa El-Sabti 1/91.

calling each other “Kafir”, while accepting little of elements of life, even if they are from the hands of our enemies, and forgetting the words of the Prophet peace be upon him and: (ask for good all your lives)^[148]. So that we do not find deficiencies in Islamic jurisprudence in attaining the interests of people.

Fifthly: It is Muslims’ belief that the shaira politics and the prophetic arrangements are the source of the maintenance of religion and life. And other arrangements are the source of evil in this world and in the Hereafter. Therefore, those evidences could be followed in all areas of life whether political, economic, social, administrative, religious and traffic. *For example*, the King of Morocco asked the scholars to develop laws in accordance with Islamic sharia using the mental evidence that we mentioned earlier, and in conjunction with specialists in each aspects that need to be generally framed to serve the interest and prevent the corruption, away from targeting the weak people and bread winners of children and the poor, along with providing what they need in terms of welfare, medication and insurance in education, health and retirement and payment of debt, and to guide them towards the beneficial jobs, industries, construction of the earth and the satisfaction of Allah and His Messenger, because the arrangements of the legislator is the right one, that includes the interests of the slaves in the two worlds, and other ones are nothing but illusions, and astray people think they are reality, while they are devilish imagination. The Quran is Allah’s wisdom among his slaves, and whoever learns the Quran and follow it, is a semi- prophet without revelation^[149]. And the whole world is less than a damage incurred by a poor Muslim. And it is the duty of Imam to take care of him as a most urgent duty in his policy towards his people.

(Allah knows best, and from him we seek success).

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